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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/785,636	02/24/2004	Roger Draft	DRA01 P-303A	2405

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PRICE HENEVELD COOPER DEWITT & LITTON, LLP
695 KENMOOR, S.E.
P O BOX 2567
GRAND RAPIDS, MI 49501

EXAMINER

SMITH, KIMBERLY S

ART UNIT	PAPER NUMBER
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3644

DATE MAILED: 04/27/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/785,636

Applicant(s)

DRAFT, ROGER

Examiner

Kimberly S Smith

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 January 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) 14-17 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,6 and 8-13 is/are rejected.
- 7) ☒ Claim(s) 3-5,7 and 18 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed 01/24/05 have been fully considered but they are not persuasive. The Applicant's argument that Ruggieri '590 does not disclose a cavity near the bottom of the cage is respectfully disagreed with. *Merriam-Webster's Tenth Edition Collegiate* dictionary defines a cavity as an "unfilled space within a mass, a hollowed-out space". As can clearly be seen in Figure 1, the door (26) in the closed position is flush with the sidewall of the cage, as such, there is inherently a cavity located within the cage, else when the doors are closed, they would not be recessed or flush with the remainder of the cage walls. Regarding the arguments relating to Ruggieri failing to disclose a cradle attached to the frame near the top opening that is adapted to receive the bottom of the door; it has been held that the recitation that an element is "adapted to" perform a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. *In re Hutchison*, 69 USPQ 138. Further, any portion located past half-way on the lower side of the door could be construed as the bottom portion and as such, with Ruggieri positively disclose that the door is slid substantially the entire length of the door, it is disclosed that more than half of the door is located on the cradle thereby meeting the claimed structural limitations.

2. With regards to the rejection of Claims 1, 2, 6, and 8-13, the Applicant has traversed the rejection as the Examiner has not specified why she considers claims 2, 6, and 8-13 to be anticipated by Ziegler. As the reference is considered to *clearly* anticipate the reference, a review of the cited patent by the Applicant is considered to be sufficient to clearly disclose the claimed structural limitations without further expounding by the examiner. However, for

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clarification, Ziegler discloses a top horizontal rod at 38. Regarding the statement that Ziegler does not disclose a door adjacent the opening of the cage, it is noted that Figure 5 illustrates a single exemplary location for which the door may be located. As grooves 27 and receiving channels 21 run the length of the structure, the door in the position closest to the opening is considered to be adjacent there to. As such, the rejection stands.

3. The terminal disclaimer filed 01/25/2005 has been approved. As such, the double patenting rejection of record has been overcome.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1, 6 and 8-13 are rejected under 35 U.S.C. 102(b) as being anticipated by Ruggieri et al., US Patent 4,365,590 (Ruggieri).

Ruggieri discloses a cage comprising a frame (12), a door (26) having a bottom portion and a top horizontal rod, a member attached to the frame along which the door rides and a cavity in the frame to receive the bottom portion (as best viewed in Figure 3).

Regarding claim 6, Ruggieri discloses at least one cradle attached to the frame to receive the bottom of the one door (note Figure 3 in which the rail mechanism acting as a cradle supports the bottom of the one door and is located near the top of the at least one opening).

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Regarding claim 9, Ruggieri discloses a side grate (42) with a top member engaging the horizontal rod (Figure 3).

Regarding claims 10 and 12, Ruggieri discloses two cradles (i.e. one connected to each sidewall).

6. Claims 1, 2, 6, 8-13 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Ziegler, US 2,220,436.

Reference discussion above in section 2.

Allowable Subject Matter

7. Claims 3-5, 7 and 18 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

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CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kimberly S Smith whose telephone number is 571-272-6909. The examiner can normally be reached on Monday thru Friday 10:00-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Teri Luu can be reached on 571-272-7045. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

kss


PETER M. POON
SUPERVISORY PATENT EXAMINER
4/18/05